

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

(a) The Carrier violated the Clerks' Agreement when it refused to grant an investigation to Florence Thornhill, Telephone Operator at Denver in accordance with Rules 53 and 49 of the Agreement.

(b) That the Carrier be required to reinstate Florence Thornhill to position of Telephone Operator at Denver and that she be compensated for wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: On July 29, 1944, about 2 P.M., Gwendolyn Coyle returned from lunch and Myrtle Sandell, Chief Telephone Operator had some words with her and Myrtle Sandell told Gwendolyn Coyle to "go home and stay there." The disturbance caused by Myrtle Sandell, at that time and subsequent thereto, so upset Florence Thornhill that she was unable to continue her work (see Exhibit "A" herewith enclosed, giving full explanation) and thereafter she was not permitted to resume work.

On August 1, 1944, Florence Thornhill made request for investigation in accordance with Rule 53. (See copy of Exhibit "B" herewith enclosed.)

On August 4, 1944, Florence Thornhill was denied investigation. (See copy of Exhibit "C" herewith enclosed.)

On August 11, 1944, Division Chairman Rohder made request to Superintendent Telegraph, Mr. Hasselbacher for investigation for Florence Thornhill. (See copy of Exhibit "D" herewith enclosed.)

On August 26, the General Chairman held conference with Mr. Hasselbacher, Superintendent of Telegraph and Staff Officer Mullen at Chicago, presented the case, and requested that an investigation be held, which was declined and on August 29, the General Chairman confirmed the request in writing to Mr. Hasselbacher. (See Exhibit "E" copy herewith enclosed.)

On August 31, Mr. Hasselbacher, Superintendent of Telegraph, replied to the General Chairman, (see Exhibit "F" herewith enclosed) in which he regarded the matter as a closed incident.

On September 1, 1944 the General Chairman appealed the case to Mr. F. R. Mullen, General Manager, Lines West, (see Exhibit "G" copy herewith enclosed) who is the highest officer designated by the Carrier to handle discipline cases.

CONCLUSION

The Carrier has evidenced that Florence Thornhill, claimant in this case, formerly a telephone operator in the employ of the Carrier at Denver, following reprimand by her supervisory employe, was guilty of a breach of her contract of employment when she "walked off the job" during her tour of duty on July 29, 1944 and that as a result of this overt act claimant terminated her rights under the subordinate rules and working conditions of schedule agreement with Brotherhood of Railway Clerks, including rules 49 and 53 on which petitioner in this case relies for basis of present claim for reinstatement of Florence Thornhill to service and reimburse for alleged wage loss,

WHEREFORE, the Board is without jurisdiction in this case whatever, and case should be disposed of accordingly.

Oral hearing is desired.

OPINION OF BOARD: Claimant is a Telephone Operator with seniority date as of August 1, 1928, who was employed in the Carrier's Denver office where the present claim originated. On July 29, 1944, she left the switchboard without permission which act the Carrier construes as a resignation. Claimant denied that she resigned her position and demanded an investigation as required by Rules 49 and 53 of the current Agreement. The question for determination is whether Claimant is entitled to an investigation as provided for in the foregoing rules.

The record discloses that on July 29, 1944, certain difficulties arose between the Chief Telephone Operator and the Switchboard Operators under her supervision. At about 2:00 p.m. of said day, the difficulties culminated in the discharge of Operator Gwendolyn Coyle by the Chief Telephone Operator for insubordination. At this point, Claimant announced that she couldn't stand it any longer and that she was going home also. The exact language used is in dispute. At the time, Claimant had one more hour of service to perform on her regular assignment. Carrier interprets Claimant's actions and conduct as a resignation. Claimant denied any intention of quitting her work and alleges that she has been dismissed and therefore entitled to an investigation under the rules cited.

We do not question that an employe may resign his position by action or conduct indicating clearly an intent to so do. But where the Carrier concludes from conflicting evidence that any employe did in fact resign, and the employe feels himself unjustly treated by such decision, he is entitled to an investigation when the request therefor is timely made. Otherwise the carrier by the simple expedient of finding that the employe resigned rather than was discharged, even though the evidence thereon was in hopeless conflict or predominated in favor of the employe, could by its unilateral action remove an employe from the protection of the collective Agreement. The carrier cannot compel an employe to accept its conclusion on conflicting evidence that employe terminated the employer-employe relationship by resignation and escape the effect of the investigation rule if the employe feels he has been thereby unjustly treated. When the Carrier declined to recognize as true her assertions that she had no intention to and did not resign, and felt that she had been unjustly treated, Mrs. Thornhill, the Claimant, was entitled to an investigation if requested in the manner provided for in the Agreement. An affirmative award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That under the circumstances shown in the record, Claimant was entitled to an investigation under Rules 49 and 53, current Agreement.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.